

**GOVERNMENT OF PUDUCHERRY  
LABOUR DEPARTMENT**

(G.O. Rt. No. 97/Lab./AIL/J/2013, dated 27th June 2013)

**NOTIFICATION**

Whereas, an award in I. D. No. 34/2008, dated 13-12-2012 of the Labour Court, Puducherry in respect of the industrial dispute between the Swadeshi Panchalai Thozhilalar Urimai Padukappu Sangam against the General Manager, Swadeshi Cotton Mills, Puducherry over change of date of joining of 17 workers has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said award shall be published in the official gazette, Puducherry.

(By order )

**S. THAMMU GANAPATHY,**  
Under Secretary to Government (Labour).

**BEFORE THE LABOUR COURT AT PUDUCHERRY**

*Present :* Thiru T. MOHANDASS, M.A., M.L.,  
Presiding Officer, Labour Court.

*Thursday, the 13th day of December 2012.*

**I.D. No. 34/2008**

The President,  
Swadeshi Panchalai Thozhilalar  
Urimai Padukapu Sangam,  
Puducherry .. Petitioner

*Versus*

The General Manager,  
Swadeshi Cotton Mills,  
Puducherry .. Respondent

This industrial dispute coming on 7-12-2012 for final hearing before me in the presence of Thiru K. Velmurugan, Advocate for the petitioner, Thiru K. Ravikumar, Advocate for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

**AWARD**

This industrial dispute arises out of the reference made by the Government of Puducherry, *vide* G. O. Rt. No. 153/AIL/Lab./J/2008, dated 13-10-2008 of the Labour Department, Puducherry to resolve the following dispute between the petitioner and the respondent, *viz.*,

(1) Whether the dispute raised by Swadehsi Panchalai Thozhilalar Urimai Padukapu Sangam, Puducherry for change of date of joining of 17 workers Thiruvalargal 1. R. Sundaramurthy, 2. N. Govindaraj, 3. C. Ezhilarasan, 4. V. Ariamala, 5. G. Seethalakshmi, 6. D. Mangalakshmi, 7. K. Subrayan, 8. J. Krishnaraj, 9. D. Paul, 10. D. Kothandaraman, 11. S. Mariapragasam, 12. R. Ravichandran, 13. M. James, 14. P. Mohan, 15. R. Mohan, 16. M. Parasuramasharma and 17. T. Danasegaran is justified or not?

(2) To what relief, they are entitled to? Give appropriate directions.

2. The petitioner, in his claim statement, has averred as follows:

At the time of appointment, the petition mentioned workmen were paid ₹ 8 per day and subsequently it was raised to ₹ 12 per day and finally at ₹ 24 per day. The said workmen worked continuously for more than 240 days of every year in the respondent mills without any sort of blackmark whatsoever. As such ranging from the year 1986 to 1988, the employees were covered under the E.S.I. scheme and E.S.I. Identity Card also issued to them in this regard. From the date on which the E.S.I. coverage was extended to them. E.S.I. contribution was deducted from their salary. On 1-4-1991 the above employees were covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1956 and separate provident fund account number was given to each and every employee and thereafter provident fund contributions were deducted from the salary of the employees. On 26-5-1993, the respondent management confirmed the services of the abovesaid 17 workmen. However, the date of joining the said workmen were entered into the service records as 26-5-1993 instead of their respective original date of appointment in the respondent mills.

On 17-5-1993 the petitioner union entered 18(1) settlement agreement with the respondent management whereby the petitioner union has agreed that it will not raise any dispute and also will not file any case as against the management with regard to date of joining of 17 workmen, until the management proceeds with 24 hours continuous operation of the mill. After signing of the above settlement agreement, the respondent continued with 24 hours continuous operations of the mill for some years. This being so, the respondent with effect from 28-8-2005 unilaterally and arbitrarily terminated the above settlement agreement without intimating the petitioner union and thereby stopped the 24 hours continuous operation of the mills. Hence, the petitioner union is not bounded by the

terms and conditions of the aforesaid agreement. As such the plea of the respondent that the petitioner cannot raise any dispute with regard to their date of joining belatedly and that too contrary to the agreed terms of the settlement agreement will not arise. Further S. Kumar, R. Jeevanandam, Adishesan, Munisamy and Sridharan were appointed in the Bharathi Mills on 3-5-1986 and their services were regularised on 1-8-1995. Though the said workmen were regularised on 1-8-1995, their date of joining was entered as 3-5-1986. Thus it is evident that the act of the respondent in the case on hand by not considering the actual date of joining of the said 17 workmen is illegal, unjust and not proper. Hence, the industrial dispute is filed directing the respondent to correct the date of joining of the said workmen from 26-5-1993 to their respective original date of appointment as mentioned in the petition in all the service records and other incidental records maintained by the respondent management.

3. In the counter statement, the respondent has stated as follows:-

The practice of respondent mill is that on requirement any person is employed as gate casuals first and then only on regular requirement become a temporary employee and then only can be confirmed. In cases of all the abovesaid 17 workmen, they were gate casuals and they were regularised in the services as per 18(1) settlement, dated 17-3-1993 with effect from 26-5-1993 as the mills required additional hands due to implementation of 24 hours working per day and for 7 days in a week as against 22½ hours per day and 6 days a week. Therefore, they were regularised as a good will gesture.

The petitioners are claiming to consider the date of entry mentioned in the E.S.I. card as the date of confirmation for all other purposes and records. The E.S.I. card is issued under the E.S.I. Act and the same yardstick under which a worker is brought under the ambit of the E.S.I. Act cannot be in blanket and blindly applied to all records not covered by the E.S.I. Act. The E.S.I. card that the petitioners rely on and base their whole claim is issued even to temporary workers, contract labourers and casual labourers. Such temporary workers, contract labourers and casual labourers cannot claim any rights based on the E.S.I. card except those that are envisaged in the Act.

The very basic details, such as name, department, category, token number, father's name, date of birth and date of entry of each and every

one of the workmen of the respondent mills, as per the records of the respondent mills are reproduced in each pay slip of such workmen. Each and every one of the petitioners, who have raised the dispute have put in service of more than twenty years and have received and checked and have been satisfied with the entries in their respective pay slips for all these years. The petitioners are estopped from now raising any dispute over the entries made in the pay slip and reproduced in the list with permanent numbers.

Further as per the practice of the respondent mills, each of the petitioners will have to submit service and identification agreement and gratuity nomination. Each of the petitioners have signed and submitted the service and identification agreements and gratuity nominations. Only based on the information given by the petitioners themselves, the entries have been made in the respondent mills records. The petitioners have not claimed that they themselves have given the date of entry wrongly. Hence, the petitioners are estopped from claiming such a relief. Hence, the respondent prays for dismissal of the industrial disputes.

4. On the side of the petitioner, PW.1 and PW.2 were examined and Ex.P1 to Ex.P7 were marked. On the side of the respondent, RW.1 and RW.2 were examined and Ex.R1 to Ex.R6 were marked.

5. *The point for determination is:*

Whether the petitioner can be considered for reinstatement in service with accrued benefits?

6. *On the point:*

The contention of the petitioner union is that the abovesaid workmen worked continuously for more than 240 days of every year in the respondent mills without any sort of blackmark whatsoever and as such ranging from the year 1986 to 1988, the said employees were covered under the E.S.I. scheme and E.S.I. Identity Card also issued to them in this regard and on 1-4-1991 they were covered under the Employees Provident Fund and Miscellaneous Provisions Act, 1956 and separate provident fund account number was given to each and every employee and thereafter provident fund contributions were deducted from the salary of the employees and on 26-5-1993 the respondent management confirmed the services of the said workmen, however, the date of joining the said workmen were entered into the service records as 26-5-1993 instead of their respective original date of appointment, which mentioned in the petition, in the respondent mills. In order to prove the said version, the President of the petitioner union was examined as PW1 and marked

Ex.P1 to Ex.P7. Ex.P1 is the copy of the pay slip and Ex.P2 is the copy of the ESI card of the workmen. As per Ex.P2, the date of joining of the each of the workmen is as follows:-

1. R. Sundaramurthy	..	21-2-1985
2. N. Govindaraj	..	1-2-1985
3. Ezhilarasan	..	2-10-1966
4. V. Ariamala	..	1-1-1984
5. G. Seethalakshmi	..	1-1-1979
6. D. Mangalakshmi	..	14-12-1979
7. K. Subrayan	..	2-1-1985
8. J. Krishnaraj	..	7-11-1984
9. D.Paul	..	12-1-1985
10. D. Kothandaraman	..	1-2-1985
11. S. Mariapragasam	..	20-10-1983
12. R. Ravichandran	..	25-10-1983
13. M. James	..	5-10-1983
14. P. Mohan	..	2-10-1982
15. R. Mohan	..	5-10-1983
16. M. Parasuramasharma	..	13-11-1982
17. T. Danasegaran	..	21-9-1982

But the date of joining of all the abovesaid workmen has been mentioned as 26-5-1993, as could be seen from the copy of the pay slip of the said workmen.

7. The learned counsel for the respondent has stated that the petitioners are claiming to consider the date of entry mentioned in the E.S.I. card as the date of confirmation for all other purposes and records and the E.S.I. card is issued under the E.S.I. Act and the same yardstick under which a worker is brought under the ambit of the E.S.I. Act cannot be in blanket and blindly applied to all records not covered by the E.S.I. Act and the E.S.I. card that the petitioners rely on and base their whole claim is issued even to temporary workers, contract labourers and casual labourers and such temporary workers, contract labourers and casual labourers cannot claim any rights based on the E.S.I. card except those that are envisaged in the Act. He further submitted that all the employees are given individual E.S.I. cards by the E.S.I. Corporation, in which the date of entry into the mills is given as per the information proved by the management and this does not mean that they have entered to the mills as casuals and hence he denied that the date of entry as per the E.S.I. Identity Card is liable to be taken as date of confirmation. In order to prove his claim, the Security Officer of the respondent mill was examined as RW.1.

8. On the side of the respondent, the Branch Manager of E.S.I. Corporation was examined as RW.2. RW.2 in his evidence has deposed that the E.S.I. card will be issued to the workmen, who is casual labour, temporary or permanent workmen, those who are getting the salary up to ₹ 15,000 per month as per the request of the management and the management will send the declaration form. RW.2 further deposed that the E.S.I. card will be issued even to the casual labourers, who are working for more than three months and even if the particular workman discontinue his service, the same number will be continued even after he rejoins in the service and the date of joining already mentioned in the E.S.I. card will continue.

9. RW.2 further stated that it is the respondent management, who is custodian of the attendance records relating to its employees and only seeing upon that, one can find out whether the workmen worked 240 days in a year or not. He also stated that based upon the information furnished by the respondent management alone, the E.S.I. card was issued by the E.S.I. Corporation.

10. The primary document which contains the date of joining of every workman in an establishment is the muster roll and the production book register. As such in order to prove the factum of employment of 17 workmen in the respondent management, the petitioner had summoned the respondent to produce the muster roll and the production book register in respect of the said workmen. However, the respondent has not produced the same and has stated that it was damaged. RW.1 has marked the pay slips of the workmen as Ex.R1, copy of the nomination forms of the workmen as Ex.R2, copy of the standing orders for the employees of Sri Bharathi Mills Limited as Ex.R3. RW.2 has marked the authorisation letter as Ex.R4, insurance particulars in respect of the said workmen as Ex.R5 and copy of the Form-5 and Form-6 as Ex.R6. Those documents are not in any way helpful to the case of the respondent. Under such circumstances, it is pertinent to refer section 114(g) of Indian Evidence Act, which runs as follows:-

“That evidence which could be and is not produced would, if produced, be unfavourable to the person withholds it.”

Thus adverse inference could be drawn against such document for not producing the relevant documents before this court and consequently, the benefit goes in favour of the petitioner.

11. Though the petitioner union has mentioned the original date of joining in their claim statement, they

have not produced any document to prove their claim. and the particulars of date of birth the date of joining are mentioned in the pay slips under Ex.P1 and Ex.R1 issued to the said workmen of the respondent mill every month. According to the respondent management, the said workmen have not objected the particulars regarding the date of birth and date of entry, which are mentioned in the pay slips for so many years, but now only, through the unions, they have objected the same and insisted the respondent management to enter the date of entry as found in E.S.I. card. The E.S.I. card is no doubt issued to the employees, those who are working in the respondent mill. But it is the contention of the management that the date of entry as found in E.S.I. card cannot be taken into consideration as date of joining, since they could have discontinued from the service and joined later stage.

12. It is not denied by the respondent management that the E.S.I. cards were issued to the petitioners, when they were working in the same establishment. When the petitioner says that the E.S.I. card is issued at the instance of the respondent management, it is the duty of the respondent to prove that the said workmen were left service in a particular date and later joined in their establishment. In this case, the respondent has not taken any steps to bring any records to prove that the said workmen were discontinued their service after issuing the E.S.I. cards to them.

13. The contention of learned counsel for the petitioner is that S. Kumar, R. Jeevanandam, Adishesan, Munisamy and Sridharan were appointed in the Bharathi Mills on 3-5-1986 and their services were regularised on 1-8-1995 and though the said workmen were regularised on 1-8-1995, their date of joining was entered as 3-5-1986 and thus it is evident that the act of the respondent in the case on hand by not considering the actual date of joining of the said 17 workmen is illegal, unjust and not proper.

14. In this regard, the learned counsel for the respondent has submitted that the said five workmen were working in the canteen for a very long time and the canteen in the mill is run by the mill management and for all purposes the said five canteen casuals were treated as mill employees and hence they were regularised during May 1986 and their work is regular and permanent in nature. But in order to prove the said claim, no document was filed on the side of the respondent.

15. The labour legislations were enacted to bring peace among the workers to bring more productivity in our country in the smooth circumstances. When the E.S.I. cards were issued to the said workmen by the

respondent management, the presumption is that the said workmen were working under the respondent management from the date of entry, which was found in E.S.I. card. The industrial legislations were enacted to achieve the ambitions enshrined under Article 14 and 21 of Constitutional Law of India. The proposition laid down by the Hon'ble Supreme Court in the following cases are very relevant at this stage:-

*2005(3) L.L.N. 719 (Madras)*

*National Small Industries Corporation Limited, Chennai Versus Presiding Officer. I Additional Labour Court, Madras and Another:-*

“The whole approach of industrial law is that the employer and employee do not stand on an equal bargaining position. Industrial law recognises that the workers are in a weaker position than the employers who have financial resources, management skills, connections etc. Hence the whole object of industrial law is to help the weaker section in the society (the workmen) and given them protection from exploitation. There can be no estoppel against a person, who accepts his designation as an apprentice, but later on raises a plea that in fact he was not an apprentice but was doing the work of a workman.”

*1982 1 L.L.J. 33 S.C.:*

*Workmen of M/s. Williamson Magor and Company Limited, Versus William Magor and Company Limited:*

“This court in the case of K.C.P. Employees' Association, Madras Versus Management of K.C.P. Limited, Madras and other reported in (1977 1 L.L.J. 322) observed:

“In industrial law, interpreted and applied in the perspective of Part-IV of the Constitution, the benefit of reasonable doubt, on law and facts, if there be such doubt must go to the weaker section, labour. The tribunal will dispose off the case making this compassionate approach but without over-stepping the proved facts.”

The above proposition of law laid down by the superior courts were to be borne in mind to decide this case. The workers, who are from weaker section of the society, should not be exploited by the management, those who are in higher position. Hence, the relief sought by the petitioner union is reasonable and genuine and the change of date of entry of the said 17 workmen according to the date of joining mentioned in their E.S.I. Identity Card is justifiable. Accordingly, this point is answered.

16. In the result, the industrial dispute is allowed and the respondent is hereby directed to correct the date of entry of said 17 workmen as per the E.S.I. register and enter the same in the relevant registers of the respondent mill. No costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 13th day of December 2012.

**T. MOHANDASS,**  
Presiding Officer,  
Labour Court, Puducherry.

*List of witnesses examined for the petitioner:*

- PW.1— 1-12-2011 — K. Mohandass  
PW.2— 29-8-2012 — Gopi Mohanan

*List of witnesses examined for the respondent:*

- RW.1— 28-9-2012 — Gopi Mohan  
RW.2— 29-11-2011 — Padmini

*List of exhibits marked for the petitioner:*

- Ex.P1 — Copy of the pay slip of the petition mentioned workmen.  
Ex.P2 — Copy of the E.S.I. card of the petition mentioned workmen.  
Ex.P3 — Copy of the letter given by the petitioner by name Sundaramurthy to the respondent, dated 28-2-2005.  
Ex.P4 — Copy of the letter, dated 12-12-2006 given by the petitioner union to respondent.  
Ex.P5 — Copy of the failure report, dated 29-7-2008  
Ex.P6 — Copy of the notification, dated 13-10-2008  
Ex.P7 — Copy of the information, dated 4-12-2009 obtained under RTI.

*List of exhibits marked for the respondent:*

- Ex.R1 — Copy of the pay slips of 17 workmen  
Ex.R2 — Copy of the nomination forms of the workmen.  
Ex.R3 — Copy of the standing orders  
Ex.R4 — Authorisation letter, dated 28-11-2012  
Ex.R5 — Insurance particulars in respect of workmen.  
Ex.R6 — Copy of the Form-5 and Form-6

**T. MOHANDASS,**  
Presiding Officer,  
Labour Court, Puducherry.

**புதுச்சேரி அரசு**

**இந்து சமய நிறுவனங்கள் மற்றும் வக்ஃபு துறை**

(அரசு ஆணை பல்வகை எண் 21/இசரி/கோ.2/2003, நாள் 2003 ஐரோபு சூன் மீ 176)

**ஆணை**

புதுச்சேரி மாநிலம், காரைக்கால் வட்டாரம், நிரவி கொம்பியூன், நிரவி, அருள்மிகு ஜம்புநாதசுவாமி தேவஸ்தானம் அரசு ஆணை பல்வகை எண் 39/இசரி/கோ.2/2003, நாள் 31-7-2003-ன் மூலம் அமைக்கப்பட்ட அறங்காவலர் வாரியத்தால் நிர்வகிக்கப்பட்டு வருகிறது. இவ்வறங்காவலர் வாரியத்தின் பதவிக்காலம் முடிவடைந்து விட்டது.

2. இந்நிலையில், மேற்குறிப்பிட்ட திருக்கோயிலை நிர்வகிப்பதற்கு ஒரு புதிய அறங்காவலர் வாரியம் அமைக்க வேண்டியது இன்றியமையாததாகிறது.

3. எனவே, 1972-ஆம் ஆண்டு புதுச்சேரி இந்து சமய நிறுவனங்கள் சட்டம், 4-ஆம் பிரிவின்கீழ் வழங்கப்பட்டுள்ள அதிகாரங்களைச் செலுத்தி, மேற்கூறிய திருக்கோயிலுக்கு கீழ்க்கண்ட ஐந்து நபர்களைக் கொண்ட ஓர் அறங்காவலர் வாரியத்தை அரசு உடனடியாக அமைக்கிறது:

**திருவாளர்கள்:**

- (1) இரா. கண்ணன், த/பெ. இராமலிங்கம், .. தலைவர் எண் 27, கோவில்பத்து, நிரவி, காரைக்கால்-609 604.
- (2) த. செல்வராஜ், த/பெ. தண்டாயுதபாணி, .. துணைத் எண் 32, காளியம்மன் கோயில் வீதி, தலைவர், நிரவி, காரைக்கால்-609 604.
- (3) ப. உதயகுமார், த/பெ. பக்கிரிசாமி, .. செயலாளர் எண் 3, கள்ளர் தெரு, நிரவி, காரைக்கால்-609 604.
- (4) கோ. குணசேகரன், .. பொருளாளர் த/பெ. கோபால்சாமி, எண் 8, யாதவர் தெரு, நிரவி, காரைக்கால்-609 604.
- (5) க. காளிதாஸ், த/பெ. கணபதி, .. உறுப்பினர் காமராஜ் நகர், எண் 8, யாதவர் தெரு, நிரவி, காரைக்கால்-609 604.

4. புதிய அறங்காவலர் வாரியத்தினர் உடனடியாக திருக்கோயிலின் பொறுப்புகளை அதன் அசையும், அசையாச் சொத்துக்கள், இதர ஆவணங்களுடன் ஏற்றுக்கொள்ளுமாறு அறிவுறுத்தப்படுகிறது.

5. 1972-ஆம் ஆண்டு புதுச்சேரி இந்து சமய நிறுவனங்கள் சட்டம் மற்றும் அதன்கீழ் இயற்றப்பட்ட விதிகளுக்குட்பட்டு, அறங்காவலர் வாரியத்தினர் திருக்கோயிலை நிர்வகிக்கக் கடமைப்பட்டவர்களாவர்.

6. அறங்காவலர் வாரியத்தின் பதவிக்காலம் இவ்வரசாணை பிறப்பிக்கப்பட்ட தேதியிலிருந்து மூன்று ஆண்டுகள் ஆகும். இதற்கிடையில் அரசு அவர்களை நீக்கினால் தவிர அல்லது தகுதி இழக்கச்செய்தால் தவிர அல்லது வாரிய உறுப்பினர்கள் தங்களது